

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 22-11068 (KBO)
FTX TRADING LTD., et al.,
(Jointly Administered)
Debtors.
.
FTX RECOVERY TRUST, Adversary Proceeding
Plaintiff, No. 24-50184 (KBO)
-against-
GATE TECHNOLOGY INCORPORATED,
GATE GLOBAL, CORP., GATE
INFORMATION PTE. LTD., and
SUN YUNZHI,
Defendants.
.
FTX RECOVERY TRUST, Adversary Proceeding
Plaintiff, No. 24-50188 (KBO)
-against-
FORIS DAX MT LTD., FORIS DAX
ASIA PTE. LTD., FORIS DAX,
INC., and IRON BLOCK CAPITAL, Courtroom No. 3
824 Market Street
Wilmington, Delaware 19801
Defendants.
Wednesday, June 25, 2025
9:34 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE KAREN B. OWENS
CHIEF UNITED STATES BANKRUPTCY JUDGE

- Cont'd -

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1	FTX RECOVERY TRUST,	.	Adversary Proceeding
		.	No. 24-50192 (KBO)
2	Plaintiff,	.	
		.	
3	-against-	.	
		.	
4	COMMON SENSE LEADERSHIP	.	
	FUND, INC. a/k/a COMMONSENSE	.	
5	LEADERSHIP FUND,	.	
		.	
6	Defendant.	.	
		.	
7	. . . . .	.
		.	
8	FTX RECOVERY TRUST,	.	Adversary Proceeding
		.	No. 24-50193 (KBO)
9	Plaintiff,	.	
		.	
10	-against-	.	
		.	
11	CONGRESSIONAL LEADERSHIP	.	
	FUND,	.	
12		.	
	Defendant.	.	
13		.	
	
14		.	
	FTX RECOVERY TRUST,	.	Adversary Proceeding
15		.	No. 24-50197 (KBO)
	Plaintiff,	.	
16		.	
	-against-	.	
17		.	
	FARMINGTON STATE CORPORATION	.	
18	(f/k/a FARMINGTON STATE BANK,	.	
	d/b/a GENIOME BANK, d/b/a	.	
19	MOONSTONE BANK), FBH	.	
	CORPORATION, and JEAN	.	
20	CHALOPIN,	.	
		.	
21	Defendants.	.	
		.	
22	

23

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1	FTX RECOVERY TRUST,	.	Adversary Proceeding
2	Plaintiff,	.	No. 24-50199 (KBO)
3	-against-	.	
4	NEW YORK SOLIDARITY NETWORK,	.	
5	Defendant.	.	
6	. . . . .	.
7	FTX RECOVERY TRUST,	.	Adversary Proceeding
8	Plaintiff,	.	No. 24-50200 (KBO)
9	-against-	.	
10	ONE NATION, INC.,	.	
11	Defendant.	.	
12	. . . . .	.
13	FTX RECOVERY TRUST,	.	Adversary Proceeding
14	Plaintiff,	.	No. 24-50201 (KBO)
15	-against-	.	
16	PROSPERITY ALLIANCE, INC.,	.	
17	Defendant.	.	
18	. . . . .	.
19	FTX RECOVERY TRUST,	.	Adversary Proceeding
20	Plaintiff,	.	No. 24-50202 (KBO)
21	-against-	.	
22	SENATE LEADERSHIP FUND,	.	
23	Defendant.	.	
24	. . . . .	.
25			- Cont'd -

1	FTX RECOVERY TRUST,	.	Adversary Proceeding
2	Plaintiff,	.	No. 24-50203 (KBO)
3	-against-	.	
4	VOTO LATINO, INC.,	.	
5	Defendant.	.	
6	. . . . .	.
7	FTX RECOVERY TRUST,	.	Adversary Proceeding
8	Plaintiff,	.	No. 24-50204 (KBO)
9	-against-	.	
10	WORKING AMERICA,	.	
11	Defendant.	.	
12	. . . . .	.
13	FTX RECOVERY TRUST,	.	Adversary Proceeding
14	Plaintiff,	.	No. 24-50211 (KBO)
15	-against-	.	
16	SECUREBIO, INC. dba	.	
17	SECUREBIO,	.	
18	Defendant.	.	
19	. . . . .	.

- Cont'd -

1 FTX RECOVERY TRUST, . Adversary Proceeding
2 . No. 24-50212 (KBO)

3 Plaintiff,

4 -against-

5 THE GOODLY INSTITUTE dba
6 GOODLY LABS,

7 Defendant.

8
9 FTX RECOVERY TRUST, . Adversary Proceeding
10 . No. 24-50213 (KBO)

11 Plaintiff,

12 -against-

13 SPARTZ PHILANTHROPIES, dba
14 RETHINK CHARITY and
15 NONLINEAR,

16 Defendant.

17
18 FTX RECOVERY TRUST, . Adversary Proceeding
19 . No. 24-50214 (KBO)

20 Plaintiff,

21 -against-

22 MANIFOLD MARKETS, INC.,

23 Defendant.

24
25

- Cont'd -

1 FTX RECOVERY TRUST, . Adversary Proceeding
 . No. 24-50220 (KBO)

2 Plaintiff,

3 -against-

4 DENG JUN, SHEN LING, TU JING, .
 5 DENG DINGYUAN, DENG LAN, DENG .
 JIAN, TU FAN, PAN YANG LIAN, .
 6 HU JINGMING, HU SIFENG, YANG .
 YUHUA, QIN YONG QIANG, HUANG .
 7 YAO, DAI FUYANG, FU LING, .
 CHEN CHAO, SHEN LIUGEN, LIN .
 8 GUODONG, YANG YIBO, XU MIN, .
 XU HONG, WAN JIAN, WU QIAO, .
 9 WU TIANMING, LI PING, JIA .
 SHUYUN, and JOHN DOES 1-20, .

10 Defendants.

11
 12 FTX RECOVERY TRUST, . Adversary Proceeding
 . No. 25-50635 (KBO)

13 Plaintiff,

14 -against-

15 KUROSEMI, INC.,

16 Defendant.

17
 18 FTX RECOVERY TRUST, . Adversary Proceeding
 . No. 25-50636 (KBO)

19 Plaintiff,

20 -against-

21 NFT STARS LIMITED,

22 Defendant.

23
 24

25 - Cont'd -

1 APPEARANCES:

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1 (Proceedings commenced at 9:34 a.m.)

2 THE CLERK: All rise.

3 THE COURT: Good morning, everyone. Nice to see
4 you. Please be seated.

5 Good morning.

6 MR. PIERCE: Good morning, Your Honor.

7 Matthew Pierce with Landis Rath & Cobb, on behalf
8 of the FTX Recovery Trust.

9 Your Honor, consistent with the Court's direction
10 at the May hearing, we've split the agenda into a morning
11 session, with respect to the omnibus matters and then an
12 afternoon session with respect to the Melamed claim objection
13 matters, which appear at Agenda Items 44 and 45.

14 Your Honor, the majority of the matters set for
15 the morning session are resolved. We appreciate the Court
16 for entering the orders that were submitted under CNO and
17 COC.

18 THE COURT: Happy to do so.

19 MR. PIERCE: From the FTX Recovery Trust's
20 position, there's only one matter set -- remaining to go
21 forward this morning, which is Agenda Item 41, which is the
22 Ross Rheingans-Yoo claim objection. Your Honor, we're aware
23 that there may be a scheduling matter that may need to be
24 addressed with respect to the claim objection response filed
25 by Mr. McNeill's client and we're happy to proceed with the

1 agenda however the Court would like.

2 THE COURT: Why don't we take Mr. McNeill's issue
3 first and then we'll go into the more substantive matter.

4 MR. MCNEILL: Good morning, Your Honor.

5 Steve McNeill from Potter Anderson & Corroon, here
6 on behalf of my client who has been identified with a unique
7 code of 911658. I understand customer identifications are
8 sealed in this matter, Your Honor.

9 And thank you for the time in court this morning,
10 Your Honor. I apologize for the early-morning email.

11 Essentially, Your Honor, my client was the subject
12 of the one-hundred-and-sixtieth-omnibus objection that was
13 filed back, I believe, in February. We had originally
14 reached out regarding potential settlement resolution, got an
15 adjournment. The adjournment was in perpetuity. Things
16 weren't progressing fast enough for my client, so he wanted
17 us to move forward.

18 We reached out to counsel on May 23rd via email
19 and said, you know, we'd like to move this forward and, if
20 not, we want to go forward at today's hearing unless you give
21 us some documents. They did give us some documents. We
22 ultimately decided the documents weren't helpful; didn't
23 really support their position. There's been no settlement
24 offers proposed either way, Your Honor.

25 So, we filed our objection last Wednesday. We

1 noted on our objection that we, that -- with a hearing date
2 for today. And then, when the agenda was filed, we noticed
3 that we were not listed on the agenda at all. We reached out
4 to counsel and, you know, asked why; apparently, there was
5 some misunderstanding regarding the production of documents
6 and that, you know, whether that moved our request to go
7 forward today or not.

8 Nevertheless, Your Honor, we're here. We want to
9 go forward. My client is interested in resolving this and
10 moving on with his life and I believe that it is a contested
11 matter. Since we filed the objection, we filed it a week
12 before, as is customary for objections in this district. We
13 gave -- we filed it a week ago with today's hearing in mind,
14 Your Honor, and it's just not on the agenda.

15 But our request would be that we go forward today
16 on this matter.

17 THE COURT: My understanding is that your claim
18 objection alleges fraudulent inducement, is that correct, or
19 your claim alleges fraudulent inducement?

20 MR. MCNEILL: It's -- it was filed *pro se* by my
21 client Your Honor.

22 There is a fraudulent component; essentially, it
23 involves what was supposed to be a charitable donation.

24 THE COURT: Uh-huh.

25 MR. MCNEILL: My client made the charitable

1 donation to FTX philanthropy or whatever it's called now.
2 Made that do nation. We do not believe that it ever left and
3 went out to any charity.

4 And so, Your Honor, in our view, that is -- you
5 know, all the funds at FTX are commingled and our view is it
6 never left the commingled accounts. And even if it did, FTX
7 has been suing charities left and right to claw back money
8 that was paid to the charities. But that is our position,
9 Your Honor, is that, basically, we were fraudulently induced
10 into making a gift that never left the FTX estate.

11 THE COURT: Okay. I ask because that type of
12 claim seems highly evidentiary in nature.

13 Are you prepared to go forward today with your
14 evidence?

15 MR. MCNEILL: I don't believe so, Your Honor.
16 There's an abundance of evidence attached to the proof of
17 claim, but I appreciate that Your Honor probably hasn't seen
18 that either --

19 THE COURT: Okay.

20 MR. MCNEILL: -- because it probably wasn't in the
21 claims objection binder.

22 THE COURT: Okay.

23 MR. MCNEILL: But, Your Honor, that is, you know,
24 that would be our evidence, would be what was attached --
25 what was included and attached to the proof of claim, as well

1 as the couple of exhibits to our response.

2 THE COURT: Okay. That's helpful. Thank you.

3 MR. MCNEILL: Thank you.

4 MR. GLUECKSTEIN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. GLUECKSTEIN: Good to see you.

7 Brian Glueckstein, Sullivan & Cromwell, for the
8 FTX Recovery Trust.

9 So, we have a very different perspective on this,
10 Your Honor, and I think Your Honor is hitting on some of the
11 salient points. We did agree -- this was one of numerous
12 claims, of course, that was in the hundred-and-sixtieth
13 omnibus objection. We did engage with counsel when they
14 reached out; we gave them an extension. We did, consistent
15 with counsel's remarks, they wanted documents, they wanted
16 information. We provided that information, provided that
17 information on June 5th. We offered to discuss it on the
18 phone. We received no substantive engagement.

19 They did file a further, a response to the
20 objection last week. They filed it under seal. It raises
21 numerous factual issues, many of which we dispute. If it is
22 the case, and apparently it is, because the first at least I
23 heard about this was last evening, that they intended to go
24 forward today or wanted to go forward today; if that is the
25 case and they're no longer interested in discussing this

1 claim with us, that's fine. That's their right.

2 But, then, what we would like to do is address a
3 litigation schedule on this claim. We believe that it might
4 be discovery that's necessary, based on the filing that they
5 filed last week. We have some fundamental disagreements.
6 Counsel just referenced things like tracing and where money
7 went; that's, by nature, of course, evidentiary. And we
8 think we should prepare for a hearing if that is, in fact,
9 necessary on this claim.

10 But, certainly, there's nothing before the Court
11 today. The Court doesn't have the information it needs to
12 rule on this and the suggestion that this could just be
13 granted, based on a proof of claim that was filed is,
14 obviously, something we disagree with.

15 THE COURT: Okay. All right.

16 Well, listen, I agree that this matter is
17 premature. I think I would at least need a reply from the
18 Trust --

19 MR. GLUECKSTEIN: Right.

20 THE COURT: -- but, also, beyond that, there
21 potentially is factual discovery that will be necessary. I
22 agree that the parties need to meet and confer and discuss on
23 a schedule moving forward.

24 It sounds, Mr. McNeill, that you would like to
25 move forward sooner rather than later, your client would.

1 And so that's fine, I think we have omnibus -- we have dates
2 scheduled in this case that you could put the matter on and
3 then drive the parties to litigation on this.

4 So, why don't you meet and confer on a schedule
5 and a hearing date and we'll move forward with that. You can
6 use an omni if we think that you can get it done --

7 MR. MCNEILL: Okay. Thank you -- yeah, thank you,
8 Your Honor.

9 THE COURT: -- in the omnibus time.

10 MR. MCNEILL: I think we're trying to schedule a
11 call, I think, tomorrow, but it was, you know, kind of -- it
12 was kind of too little too late at that point --

13 THE COURT: Yeah.

14 MR. MCNEILL: -- and so, I did want to raise it
15 for Your Honor because I think, you know, we had a
16 fundamental disagreement about even the tracing thing, given
17 the facts and circumstances of this case, Your Honor. But I
18 understand your ruling and we will meet and confer and get
19 this back on the calendar.

20 THE COURT: That would be great.

21 MR. MCNEILL: Thank you, Your Honor.

22 THE COURT: That would be helpful.

23 And the docket is becoming unmanageable, it seems,
24 so it's important that you all keep abreast of your matters
25 and do what you did to keep pushing forward to get them

1 scheduled, because things can just get lost. So it's
2 incumbent upon everyone to be focused and advocate their
3 scheduling, I think, in a case of this nature, so thank you.

4 MR. MCNEILL: Thank you, Your Honor.

5 I'm not sure there's much else going forward, but
6 I am not interested in it.

7 May I and my colleague be excused?

8 THE COURT: That would be fine.

9 And just one more thing. I'm fine with you all
10 want to agree on an informal schedule, but to the extent that
11 there'll be further deadlines that we could, perhaps, from
12 the Court's standpoint, keep track of, like, in a reply
13 deadline and when you want to schedule it for a hearing, if
14 you could just keep us abreast of it, I would appreciate it
15 because we'll monitor and be able to prepare for the hearing,
16 as opposed to, you know, receive a reply two days before the
17 hearing. It just makes it difficult for us to be -- to
18 prepare.

19 MR. MCNEILL: Absolutely, Your Honor.

20 THE COURT: If you want to do a more formal order,
21 just submit it under certification of counsel and I'll enter
22 that order. It's up to you.

23 MR. MCNEILL: Okay. Thank you, Your Honor.

24 THE COURT: Okay. Thank you.

25 You may be excused.

1 MR. GLUECKSTEIN: Thank you, Your Honor.

2 And point understood, and we are, as the Trust,
3 endeavoring to do that. We understand there are a number of
4 matters, there are a number of claims objections that are
5 pending. We are, certainly, only trying to bring forward the
6 ones that we believe are ripe and ready for the Court's
7 attention --

8 THE COURT: Okay.

9 MR. GLUECKSTEIN: -- that we're unable to resolve.
10 And we, of course, will give the Court sufficient notice on
11 that.

12 THE COURT: Okay. Thank you.

13 MR. GLUECKSTEIN: With respect to the matter going
14 forward this morning, and we have successfully, as Mr. Pierce
15 referenced, been able to resolve many of the matters that
16 were originally scheduled for this morning's session,
17 consensually. Well, there was a late adjournment on one that
18 we're talking to the movant.

19 So, as far as this morning goes, the only matter
20 going forward is Agenda Item 41, which is there's objection
21 to the remaining portion of the proof of claim filed by Ross
22 Rheingans-Yoo. Your Honor, there was a lot of paper
23 associated with this claim, but there's very little of it
24 that's still relevant at this point.

25 THE COURT: I'm motioning for the counsel to the

1 claimant to move forward and set yourself up at counsel's
2 table, if you see fit.

3 (Pause)

4 MR. GLUECKSTEIN: And specifically, Your Honor,
5 with respect to the landscape of this claim, in April
6 of 2024, the Debtors were able to settle all aspects of this
7 claim except for what is referred to in the briefing as the
8 "FDU claim," which relates to a portion of a claimed bonus
9 where the claimant asserts FTX will make, upon election, a
10 \$650,000 donation to an effective, alterous cause of the
11 movant's choosing if he wants, is the language that was used.

12 We resolved everything else. We left that claim
13 expressly open because there was a disagreement with that
14 claim that could not be reached. And so, where we -- what we
15 tried to do was streamline this issue for the Court. And the
16 parties are in agreement that the question before the Court
17 today is really one that's legal in nature and application of
18 what are undisputed facts at this point; in fact, we have
19 filed a stipulation of undisputed facts, filed at
20 Docket 29218, so that there are no material facts in dispute
21 and we agreed no evidentiary hearing would be necessary.

22 I will briefly address why the claim, from the
23 Trust's perspective, can never be allowed. We did address
24 these points comprehensively in our reply brief filed at
25 Docket 30712. But just for a bit of context, Your Honor,

1 stepping back, what Mr. Rheingans-Yoo is asking this Court to
2 do is to compel the FTX Recovery Trust to make a \$650,000
3 payment to a still-undisclosed, effective, alterous charity
4 of his choosing from funds that, of course, have been
5 recovered for the benefit of FTX creditors to be distributed
6 to victims of the fraud and the matters that have been before
7 this Court for, unbelievably, will soon be three years.

8 Mr. Rheingans-Yoo is seeking this money to be paid
9 out of the trust, despite the fact that the offer to make
10 such a donation that if it had been accepted prepetition --
11 and there's no dispute that there was never any designation
12 made by the claimant prepetition; there was never a request
13 made to FTX prepetition that's in the stipulated facts -- but
14 if a request had been made and a payment had gone out in the
15 period of time that we're talking about prepetition, the
16 Debtors would have sought to claw this money back as a
17 fraudulent transfer, alongside the approximately \$95 million
18 and counting of improper, prepetition FTX donations that were
19 made to hundreds of entities that have already been brought
20 back into the estate.

21 The record of FTX making specious, fraudulent,
22 improper payments to purported charities and political groups
23 is well-documented in the record of these Chapter 11 cases
24 and elsewhere. There's no basis, legally, equitably or
25 otherwise to permit Mr. Rheingans-Yoo to force the Recovery

1 Trust to make the \$650,000 payment to an undisclosed
2 recipient now, when if FTX had done so prepetition, we submit
3 it would not have been permitted to stand.

4 The request for payment that the claimant has
5 dressed up as a claim, we submit, must be denied for three
6 independent reasons and just to touch on them briefly, first,
7 the movant has -- the claimant has no standing to recover on
8 the FDU claims because he's neither a creditor with an actual
9 entitlement to be paid, nor an authorized agent of such
10 creditor. His proof of claim asserts that he is the
11 creditor. He checked the box; he's the creditor who's
12 seeking to recover from the estate.

13 He has since recognized in the papers and in the
14 stipulated facts, that he doesn't have right to payment on
15 the claim under which the terms of the bonus memo, if
16 enforceable, merely provided that Mr. Rheingans-Yoo would be
17 able to direct a payment, if requested, to an effective,
18 alterous cause.

19 THE COURT: Let me interrupt you.

20 If he had made the designation prepetition, as you
21 assert was necessary, then what would have been the -- what
22 would you have like to seen -- what would you have liked to
23 see with respect to a claim?

24 MR. GLUECKSTEIN: I think the only -- at that
25 point, if a designation had been made -- if the hypothetical

1 is the designation was made but the payment was not made --

2 THE COURT: Correct.

3 MR. GLUECKSTEIN: -- if he had just identified the
4 creditor --

5 THE COURT: Uh-huh.

6 MR. GLUECKSTEIN: -- potentially, that
7 organization could have attempted to file a claim. We would
8 object to it, because we don't believe that would be a valid
9 claim.

10 THE COURT: Why is that, again, I'm sorry? It's
11 not abundantly clear to me why you don't think it would be a
12 valid claim, because under -- isn't the theory that it is
13 part of his bonus compensation?

14 MR. GLUECKSTEIN: His theory is that it's part of
15 his bonus compensation, right.

16 THE COURT: Okay.

17 MR. GLUECKSTEIN: The question is whether or not
18 the bonus compensation offer was, in fact, accepted.

19 So, if it was, in fact -- if the hypothetical is
20 it was, in fact, accepted and he designated somebody to
21 receive this payment, but we did not make the payment, we
22 would still have, at that point, that entity could,
23 theoretically, I guess, have come in and made a claim and we
24 would have had to evaluate the propriety of that claim and
25 the circumstances in which that grant was made to that

1 entity.

2 THE COURT: Uh-huh.

3 MR. GLUECKSTEIN: That's a different fact pattern
4 that we have now.

5 Those two gating issues, right, from our
6 perspective, never happened. There was never an acceptance
7 of the offer to actually inform FTX that they want -- that
8 the claimant wanted such a payment to be made and no
9 designation was ever made of an entity.

10 So what we have now, post-petition, is
11 Mr. Rheingans-Yoo coming in and arguing that that offer was
12 somehow fixed and we should now make the payment to him, that
13 maybe could be directed. We, of course, have no recourse as
14 to where that money would go at that point and, of course,
15 the plan isn't set up that way. And that's why the case law
16 is clear that the actual claimant has to be the party who is
17 submitting the claim unless they are doing it on behalf of
18 another party and we know who that party is.

19 What we would have this in situation, if this
20 claim were to become allowed, we would make a \$650,000
21 payment to the claimant who, even under the bonus
22 compensation structure, if accepted as true, prepetition, was
23 never entitled to possess that money or to keep that money,
24 certainly. He was entitled to direct FTX to make a payment
25 to somebody else. That never happened and would still never

1 happen, right. As we sit here today, we have no idea where
2 that money would go if this claim was ultimately allowed.

3 THE COURT: And why wouldn't I be able to just
4 direct the claims agent to make the distribution to the
5 charitable entity of his choosing?

6 MR. GLUECKSTEIN: If the claim were to ultimately
7 become allowed and Your Honor put parameters around it, it
8 would be under -- you could order and put parameters around
9 what you needed to put it around --

10 THE COURT: Uh-huh.

11 MR. GLUECKSTEIN: -- but under our claims
12 structure under the plan --

13 THE COURT: Uh-huh.

14 MR. GLUECKSTEIN: -- right, from the Trust's
15 perspective, if we have an allowed claim, we pay the
16 claimant.

17 The holder of the claim at that point would be
18 Mr. Rheingans-Yoo, as the claimant, who has submitted the
19 claim. We have nobody else on the scene. We have nobody
20 else identified as to where that money would go.

21 THE COURT: Okay. I understand. Thank you.

22 MR. GLUECKSTEIN: The only other point I would
23 just address, and I'll let him speak -- his counsel speak and
24 reserve on rebuttal -- but the -- what we see in the further
25 response that the claimant filed here is a lot of reference

1 and discussion about the negotiation history leading up to
2 the bonus memo that documented what we're now here talking
3 about, this potential \$650,000 payment. And we submit while
4 that documentation is annexed to the stipulated facts because
5 those documents exist, right, our position is that none of
6 those documents are relevant and that parol evidence is not
7 admissible for the question at hand because what we have is
8 an employment agreement that postdates those documents.

9 That agreement includes an integration clause.
10 It's clear. The language is clear. The case law is clear
11 that on that type of language and, in fact, almost verbatim
12 language, the cases we cite in our reply papers, the Court is
13 not to look at parol evidence that predates that. If
14 Mr. Rheingans-Yoo liked some of the formulations of how his
15 compensation bonus was going to be structured from the
16 earlier correspondence between himself and Mr. Bankman-Fried,
17 he needed to document that in the signed agreement.

18 The signed agreement is what controls here. That
19 does not provide for any of this with respect to this
20 potential payment. What, then, would govern it was his bonus
21 memo that postdates in connection with his employment
22 agreement and that has this language, whereby he needs to
23 have accepted and designated in order to trigger this.

24 And from our perspective, Your Honor, it is
25 important that the employment agreement itself talks about

1 the fact that a bonus could be offered and granted at the
2 sole discretion of the Debtor entity. And terms can be put
3 on that. Conditions can be put on that. And the conditions
4 that were put on this particular piece of the grant, unlike
5 his other compensation which resolved for the settlement that
6 we reached last year, was that this had to be accepted.
7 There had to be direction provided to the Debtor, or to FTX
8 at the time --

9 THE COURT: Uh-huh.

10 MR. GLUECKSTEIN: -- and that never happened. And
11 it's undisputed that it has never happened, even up until
12 today.

13 What's being asked for is the Court to grant this
14 claim, to make the \$650,000 payment, and as we would have to
15 pay out under our plan, absent the Court imposing some sort
16 of conditions, we would pay it to the claimant and that would
17 be the end to the Trust's role in this. And we don't believe
18 that under the circumstances, funds should be coming out of
19 the trust that are otherwise distributable to victims here
20 for this sort of a claim.

21 THE COURT: When do you assert was the deadline by
22 which the claimant had to accept the alleged offer?

23 MR. GLUECKSTEIN: The claimant -- well, the
24 reality of the situation is that shortly after the events in
25 question here, we filed for bankruptcy, right, so --

1 THE COURT: Which would have been my next
2 question: When was the petition date in relation to this?

3 MR. GLUECKSTEIN: So while there wasn't a firm
4 expiration deadline that's set out in the documents, we
5 certainly believe FTX would view this as requiring acceptance
6 within a reasonable period of time. But it's mooted by the
7 fact that, from our perspective, that the bankruptcy
8 intervened here.

9 And so there was no -- there was a period of time
10 pre-bankruptcy, but no designation was made. But then the
11 bankruptcy happens, the proof of claim is filed. There was
12 never any attempt to designate anybody pre or post-petition,
13 and so --

14 THE COURT: When was the bar date established in
15 this case?

16 MR. GLUECKSTEIN: I'm sorry, Your Honor?

17 THE COURT: When was the bar date?

18 MR. GLUECKSTEIN: The bar date on this type of a
19 claim was June -- the non-customer claim bar date was June
20 of 2023.

21 THE COURT: Okay. Thank you.

22 MR. GLUECKSTEIN: So that's -- you know, the claim
23 was filed and preserved in connection with the bar date, but
24 the bar date was set eight months after the petition date.

25 THE COURT: Understood.

1 Okay. That's helpful. Thank you.

2 MR. GLUECKSTEIN: Absent any other questions, Your
3 Honor, I would just reserve time for rebuttal.

4 THE COURT: I don't think I have any at this time.
5 Thank you.

6 MR. GLUECKSTEIN: Thank you, Your Honor.

7 MR. JOYCE: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. JOYCE: Nice to be here, Your Honor.

10 THE COURT: Nice to see you.

11 MR. JOYCE: Michael Joyce for claimant, Ross
12 Rheingans-Yoo.

13 Your Honor, Mr. Rheingans-Yoo is in court today,
14 along with my co-counsel Scott Simon of the Goetz Fitzpatrick
15 firm. Mr. Simon is admitted *pro hac* and I would cede the
16 podium to Mr. Simon if it pleases the Court?

17 THE COURT: That would be fine. Thank you.

18 MR. JOYCE: One matter, Your Honor, before I do.

19 I want to make sure you had a copy of the stip and
20 the related exhibits; if not, Your Honor, we can hand up a
21 binder.

22 THE COURT: Oh, I don't have them in front of me
23 and I'm happy to refer to them during argument.

24 MR. JOYCE: May I approach, Your Honor?

25 THE COURT: Absolutely.

1 (Pause)

2 THE COURT: Thank you.

3 Do you happen to have an extra copy for my law
4 clerk?

5 MR. JOYCE: I have possibly one to share. You can
6 have this one. We have our own copy.

7 MR. SIMON: We gave a copy to counsel, so...

8 THE COURT: Oh, okay. If you happen to have an
9 extra one. Thank you.

10 MR. SIMON: Thank you. I appreciate it.

11 Good morning, Your Honor --

12 THE COURT: Good morning.

13 MR. SIMON: -- Scott Simon, Goetz Platzer, LLP,
14 representing Ross Rheingans-Yoo, who is here in the
15 courthouse with us today.

16 The Debtors are objecting to a strawman version of
17 Ross' claim. They say Ross lacks standing, but they cite
18 products liability cases where the claimant had no
19 relationship with the Debtor. They cite a case where the
20 claimant sold his claim to a third party before he filed it.
21 They cite cases where the claimant filed the proof of claim
22 representing an undisclosed class action, right.

23 None of the cases the Debtor cites addressed the
24 issues that we have before the Court today, which is Ross was
25 employed by the Debtor. The Debtor awarded him a bonus --

1 that's undisputed -- the Debtor did not pay the bonus. Ross
2 has standing to assert a wage claim here and this isn't
3 argued; this is stipulated fact.

4 The Debtor issued a bonus memo to Ross two months
5 before the petition date, in August or September of 2022.
6 The Debtor did not dispute Ross' standing to assert the cash
7 portion of his claim; that was resolved. So it doesn't make
8 sense for the Debtor to say that Ross lacks standing to
9 assert a claim based on the FDU portion, which was awarded in
10 the same bonus memo.

11 The Court understands that it's not our position
12 that Ross should be paid this FDU claim. He is asserting the
13 claim because he has a right, a property right, a wage right
14 to direct payment to a charity that he designates.

15 Next, the Debtors say that Ross forfeited the FDU
16 bonus by not accepting it in the two months between the bonus
17 memo and the petition date. Again, the Debtor argues against
18 the strawman.

19 They cite a case where the Debtor claims he should
20 have been awarded a bonus based upon the Debtor's past course
21 of performance of awarding bonuses to people in that position
22 and the Court disallowed the claim because the Debtor had the
23 discretion to award a bonus or not.

24 Here, of course, the parties stipulated that the
25 Debtor actually awarded the FDU bonus to Ross. This

1 distinction is material, Your Honor. The Debtor did not
2 engage with the numerous cases we cited for the principle
3 that a bonus is earned when it's awarded, not when it's paid,
4 even if the bonus is contingent upon future events. Nor did
5 the Debtor engage with the cases we cited anticipating the
6 argument on reply that Ross waived the bonus by not accepting
7 it before the petition date.

8 It's black-letter law that waiver requires a
9 voluntary and intentional relinquishment of rights. In the
10 stipulated facts, the parties agree that the bonus memo
11 contained no mechanism for Ross to accept the bonus, nor a
12 deadline for him to do so.

13 In one of the cases the Debtor cited on reply,
14 Barker v The Bancorp, the Court recited a longstanding policy
15 against the forfeiture of earned wages. That's what we have
16 here. Ross, indisputably, earned a bonus. It was awarded to
17 him. The Debtor is wrongfully arguing that Ross forfeited.

18 Now, the Debtors would have the Court exclude
19 Exhibit G in the binder we just provided; that's called
20 "final Ross terms." The final Ross terms is the final
21 version of a negotiated document between Ross and the Debtors
22 that was executed before the employment agreement was signed.

23 The Debtor seeks to preclude Ross terms because
24 the Ross terms affirmatively states that Ross would receive
25 the bonus. The Debtor's obligation to pay the bonus is not

1 contingent upon Ross accepting it. There's no "if you want"
2 in the bonus memo.

3 The Debtor also seeks to preclude Ross terms
4 because it discusses Ross holding or rolling over the FDU
5 bonus, demonstrating that the parties never expected Ross to
6 immediately designate a charity.

7 Now, the Debtor holds up the employment
8 agreement's integration clause as a complete bar to the
9 admissibility of Ross terms as parol evidence, but that's not
10 the law. Even the cases cited by the Debtor provide that an
11 integration clause prevents evidence from being admitted only
12 for the purpose of contradicting a writing when the subject
13 is specifically dealt with in the written agreement.

14 Here, Ross does not seek to shirk his part in or
15 avoid the consequences of the plain language of the
16 employment agreement. The employment agreement provides the
17 Debtor explicitly with two pieces of discretion: how much --
18 whether to award a bonus at all and if the bonus is awarded,
19 how much to award. This is undisputed.

20 The Debtor ignores that the employment agreement
21 fails to discuss the structure of the bonus as the bonus
22 structure was discussed in Ross terms. So Ross terms doesn't
23 contradict the employment agreement; it acknowledges that the
24 Debtor has discretion to award a bonus. It's right there in
25 Ross terms. But it says if a bonus is awarded, then it will

1 be awarded, half in cash and half in FDUs that Ross can
2 direct to donate to charity.

3 So --

4 THE COURT: Doesn't the bonus memo memorialize
5 that anyway; I mean, doesn't the bonus memo that came after
6 the employment agreement --

7 MR. SIMON: It does --

8 THE COURT: -- provide the bonus and the FDU
9 award?

10 MR. SIMON: Your Honor, you're absolutely right,
11 but what it --

12 THE COURT: Okay. So why do I need to look at the
13 Ross terms anyway?

14 MR. SIMON: Because -- for two reasons: one, the
15 bonus memo doesn't say -- it's inconsistent with the
16 employment agreement, right. The bonus memo says, "if you
17 want."

18 THE COURT: Okay.

19 MR. SIMON: The employment agreement doesn't say,
20 "if you want."

21 So while we're on the topic of this integration
22 clause, the Debtor seeks to apply it to Ross, but not to,
23 themselves. If the Debtor is correct that the employment
24 agreement is fully integrated, right, they claimed a minute
25 ago, terms can be put on the award of the bonus; that's

1 Counsel's own language.

2 Terms can't be put. That's what an integration
3 clause means, right? So if the employment agreement is fully
4 integrated, it says the Debtor has discretion whether to
5 award a bonus and how much to award a bonus. It doesn't say
6 the Debtor can condition the bonus on Ross' specific
7 acceptance of it; it's awarded. It's deemed accepted.

8 The employment agreement does not allow the Debtor
9 to condition a bonus. It's also worth mentioning that the
10 employment agreement, while being unambiguous, was followed
11 by the bonus memo, which is ambiguous. The Debtor admits
12 that the bonus memo doesn't tell Ross by when he needed to
13 designate a charity, nor the mechanism for him to do so.

14 So there's a fundamental principle that ambiguous
15 documents are construed against their drafting. The Debtor
16 cited a case about the longstanding policy against forfeiting
17 wages. So the Debtor can't be heard to argue that Ross
18 voluntarily and intentionally forfeited this FDU bonus by not
19 accepting it in the two months between when it was awarded
20 and when the Debtor filed a Chapter 11 petition. This may
21 certainly be an issue of first impression for the Court.
22 It's certainly unusual for an executive to negotiate for half
23 of his bonus to be paid as a donation to the charity of his
24 choice, but Ross is a charitable person. He was hired to
25 direct the charity and he wanted his compensation to be paid,

1 in part, to charity. This is what the Debtor and Ross
2 agreed, as evidenced by Ross terms.

3 THE COURT: Well, putting aside the Ross terms, if
4 this is a contract dispute, one could argue that the missing
5 deadline is a missing term. So what's my authority to fill
6 in, under contract law, the missing term?

7 MR. SIMON: The missing term can be filled in by
8 extrinsic evidence because if there's a missing term, then
9 the employment agreement is only partially integrated. And I
10 cited many cases for that provision, that principle in my
11 papers.

12 If a partially integrated document is presented to
13 the Court, then the parties' prior negotiations are fair
14 game, especially here, where that parol evidence does not
15 contradict the agreement. The Ross terms is the exact
16 evidence the Court is looking for that says: Here's how the
17 bonus will be structured. There is no timeline for Ross to
18 accept. It could be held. It could be rolled over. And
19 there's no "if you want" provision.

20 But even if the Court declines to consider Ross
21 terms, there's no doubt that the FDU bonus was part of Ross'
22 compensation. He earned that compensation when the Debtor
23 awarded it to him and the Debtor's attempt to blatantly add
24 an "if you want" term that's not in the employment agreement
25 should be rejected.

1 THE COURT: Well, couldn't the proof of claim be
2 the answer to the "if you want"?

3 MR. SIMON: It certainly could.

4 I mean, the Debtor is claiming that it wasn't
5 accepted within a reasonable time, but given a mere two
6 months and the fact that Ross was an employee, I don't think
7 that argument holds water. So, yes, Your Honor, I believe
8 that the claimant here should not be found to have
9 intentionally and voluntarily forfeited wages that he earned.

10 THE COURT: Let me ask you this: Why haven't you
11 designated the charity?

12 MR. SIMON: Because --

13 THE COURT: Why don't we know who this alleged
14 charity would be? I have concerns about that.

15 MR. SIMON: Because as soon as we filed the
16 claim --

17 THE COURT: Uh-huh.

18 MR. SIMON: -- well, let's back up for a second.

19 The Debtor filed an adversary proceeding against
20 Ross and several other entities. Ross was the director of an
21 FTX affiliate called "Latona BioScience." Latona was one of
22 the charitable arms of FTX and Latona made grants, donations,
23 investments in health and science companies.

24 The Debtor clawed back, as part of this adversary
25 proceeding settlement, those donations because they were made

1 directly from the Debtor to those entities. Ross as a
2 Defendant was alleged wrongfully to have, you know, conspired
3 with Sam Bankman-Fried about the underlying fraud. These
4 claims were all resolved and settled, but because in that
5 adversary proceeding the Debtor immediately indicated that
6 Ross was not entitled to any portion of his claim, we didn't
7 feel that it was necessary or proper at the time to throw up
8 a flag and say, Oh, by the way, here's the charity, right.

9 It's just, procedurally, we were baffling over
10 whether the charitable donation, that FDU claim, was
11 allowable. And now, once the Court determines that it's
12 allowable, we can certainly work with the Court and Counsel
13 to -- with, you know, the claims payment process and the
14 claims administrator to pay that out. Ross does not seek to
15 be paid that money, but Ross has the property right to direct
16 the Debtor to pay that money.

17 Thank you, Your Honor.

18 THE COURT: Okay. Thank you. I understand.

19 MR. GLUECKSTEIN: Thank you, Your Honor.

20 Brian Glueckstein for the Recovery Trust.

21 The backdrop here is important, all right. This
22 all arises out of what was a substantial piece of fraudulent
23 transfer litigation. What the claimant was doing, we had
24 significant concerns, we had serious allegations about what
25 Latona, itself, what all these charitable donations that were

1 coming out of this entity were doing. We did claw those
2 amounts back. There were settlements.

3 So the merits of our allegations were never
4 adjudicated by the Court, because we managed to settle those
5 claims consensually, okay. But at the end of the day, what
6 it's being asked to do now is to take a future -- an
7 additional portion of -- I'll come back to where I started.

8 If this money had been paid out in the period
9 we're talking about, if on September 2nd, the claimant had
10 designated the charity and FTX had made the payment,
11 this \$650,000 would have been subject to the same clawback as
12 all the other payments that were subject to that litigation
13 and otherwise.

14 THE COURT: Well, you would have asserted that.

15 MR. GLUECKSTEIN: We would have asserted that.

16 THE COURT: Right. That's not fact or law.

17 MR. GLUECKSTEIN: It's not fact.

18 THE COURT: The fact is that you would have tried
19 to claw back.

20 MR. GLUECKSTEIN: And I --

21 THE COURT: But that's not the facts we have
22 before us.

23 MR. GLUECKSTEIN: Well, I think it would raise an
24 interesting question if it was paid out now, whether we still
25 retain those claims because I think --

1 THE COURT: Absolutely.

2 MR. GLUECKSTEIN: -- we would seek to claw those
3 back if it were to be paid out now because it's all arising
4 out of the same circumstances. But I guess --

5 THE COURT: I guess all rights reserved, if I were
6 to allow the claim.

7 MR. GLUECKSTEIN: So that's -- I mean, that,
8 potentially, is an issue for down the road if we were to get
9 there.

10 THE COURT: Okay.

11 MR. GLUECKSTEIN: But at the end of the day, the
12 issue here, with respect to this payment, the employment
13 agreement itself talks about, has a section about bonuses:
14 You may be eligible for a bonus.

15 The bonus memo, right, the bonus memo itself talks
16 about and has this language: If you want us to make the
17 payment, we'll make the payment. That is an offer. That
18 piece of it is different; it's worded very differently than
19 the rest of his compensation, which awards him specific
20 compensation.

21 And so it is our argument that that piece of that
22 offer had to be accepted and it wasn't. And I understand
23 Your Honor's hypothetical to counsel: Could the proof of
24 claim by the acceptance? That's a question for the Court.
25 We don't think so; we think this needed to happen earlier in

1 time.

2 THE COURT: Well, I guess I'm beginning to ask you
3 the same question that I asked claimant's counsel, which is
4 under your argument, distilling it to a legal theory, okay,
5 which is what I'm required to do, there's a missing term,
6 because everyone agrees there's no deadline. So I have to
7 fill in that term or maybe the missing term is so essential
8 it negates the entire contract, but that's not what I'm
9 hearing.

10 So, how do I fill the missing term in? What do I
11 look to? What's your position?

12 MR. GLUECKSTEIN: Our position -- I certainly
13 don't -- we certainly don't agree. Well, there's two points.
14 So, the Ross terms, as they're referred, we do not believe
15 those are not admissible.

16 THE COURT: Okay.

17 MR. GLUECKSTEIN: I don't believe, even if Your
18 Honor were to look at those terms, that that answers the
19 question Your Honor is positing now.

20 THE COURT: Correct.

21 MR. GLUECKSTEIN: Because it doesn't -- in those
22 terms, it's more direct language about awarding, but it
23 doesn't talk about acceptance, how this would be paid;
24 nonetheless, we think the answer here to this question is,
25 this never happened in the two months prior to the petition.

1 The petition happened.

2 Our position is regardless of whether there was a
3 deadline, whether there was a firm deadline that had to be
4 executed on by Mister -- by the claimant here, if, regardless
5 of whether that existed or what that term would be, there has
6 to be a prepetition claim as of the petition date. Now, our
7 argument is that claim never vested, because he never
8 accepted it.

9 So, whether he could have accepted it a day later
10 or a month later or two months later --

11 THE COURT: Uh-huh.

12 MR. GLUECKSTEIN: -- had there been no bankruptcy,
13 he never accepted the offer as of the petition date. There
14 was no claim. There was an offer with no acceptance to this
15 piece of his bonus offer. He doesn't have a prepetition
16 claim that vested as of the petition date.

17 THE COURT: It wouldn't be contingent?

18 MR. GLUECKSTEIN: Contingent on -- I don't think
19 so -- contingent on him accepting, later, the offer?

20 THE COURT: Well, there's no deadline. I guess
21 I'm sorry that I'm fixated on this deadline and, you know,
22 you have to get me off the deadline, because I'm fixated on
23 this deadline. It's clear, under your theory, there's an
24 offer, but there's no indication of when the claimant may
25 have accepted or was required to accept, so to me, there's a

1 missing term.

2 Do we disagree?

3 MR. GLUECKSTEIN: If there's -- there is -- there
4 is no deadline. We -- I agree --

5 THE COURT: Okay.

6 MR. GLUECKSTEIN: -- there is no deadline, as in
7 the documentation --

8 THE COURT: Right.

9 MR. GLUECKSTEIN: -- as to when he would have had
10 to accept.

11 THE COURT: Okay. So, does that make the claim
12 contingent?

13 MR. GLUECKSTEIN: I think it -- I don't think it
14 makes the claim contingent. I think what it does is that
15 he -- that there was no -- there was no claim as of the
16 petition date, because he did not accept it prior to that.

17 Whether he -- whether the deadline was
18 November 1st, December 1st, six months later, the intervening
19 event here was a bankruptcy. There was no claim that he has
20 at that time.

21 THE COURT: Okay.

22 MR. GLUECKSTEIN: If the argument is he could have
23 accepted it at any point in the future and we have this
24 indefinite, contingent claim, you know, it's -- we disagree
25 with that.

1 THE COURT: Okay. No, that's helpful.

2 Okay. I think I more -- I understand your
3 position. Okay.

4 MR. GLUECKSTEIN: Thank you, Your Honor.

5 THE COURT: Okay. Thank you.

6 Okay. Let me take a short break and I'm going to
7 come back and rule, all right.

8 We'll stand adjourned.

9 MR. SIMON: Thank you, Judge.

10 (Recess taken at 10:16 a.m.)

11 (Proceedings resumed at 10:42 a.m.)

12 THE CLERK: All rise.

13 THE COURT: Thank you for your patience. Please
14 be seated.

15 All right. Thank you for the submissions in
16 anticipation of today's hearing on this issue, as well as the
17 arguments today. And I do appreciate the parties meeting and
18 conferring to streamline the hearing today and reach the
19 stipulated facts that smoothed the way for today's argument.

20 Based on the submissions and the arguments of
21 counsel today, I am prepared to overrule the Debtor's
22 objection and allow the FDU claim as a general unsecured
23 claim. I'll note at the outset this is a highly unusual set
24 of facts -- I've never seen it before -- it does put us in a
25 bit of a procedural, a unique procedural posture, with

1 respect to the claim distribution, and I'll talk about that
2 in a moment. But to the actual issues at hand, I do find
3 that the claimant has standing to assert this claim, given
4 his personal interests in the FDU and the bonus. And I do
5 believe that the claim was part of his bonus, as indicated by
6 the subsequent memorandum of Mr. Bankman-Fried, outlining the
7 terms of the discretionary bonus approved by the company.

8 As I think I hinted at very clearly in the
9 argument, the deadline to accept the FDU bonus was not
10 delineated in the memo, but I find that it was preserved
11 through the proof of claim that was submitted timely,
12 pursuant to Judge Dorsey's bar date order and that this is
13 reasonable, given that the bankruptcy intervened shortly
14 after the bonus memorandum was issued.

15 Mr. Yoo has indicated that he is not seeking to
16 receive payment of the claim; he would like it directed to
17 the charity. I think the way to go about handling this issue
18 is for the parties to meet and confer on the designated
19 charity and that there is an order that allows the claim, but
20 directs the claims agent to make the payment to the charity
21 that is designated by the claimant.

22 If there's dispute, with respect to the
23 claimant -- the charity that is designated; that issue is not
24 before me today and I would entertain the dispute, if there
25 is one. You'll have to let me know what that dispute is and

1 how we'll tee it up, okay.

2 Let me ask, when can you make the decision on the
3 charity, because I think it needs to be done ASAP.

4 MR. SIMON: Within the week, Your Honor.

5 THE COURT: Okay. All right.

6 So meet and confer with Mr. Glueckstein and his
7 colleagues regarding a form of order that would memorialize
8 the ruling and address the distribution issues. There could
9 be some unique issues from the Trust's perspective and the
10 claims agent, so we'll work through those issues and I'll be
11 here if you need me for subsequent disputes, okay.

12 Okay. Thank you very much.

13 MR. SIMON: Thank you.

14 THE COURT: Is there anything else for this
15 session?

16 (No verbal response)

17 THE COURT: No?

18 Okay. I will see you, then, at 1:30. Thank you
19 all very much.

20 COUNSEL: Thank you, Your Honor.

21 THE COURT: We'll stand adjourned.

22 (Recess taken at 10:45 a.m.)

23 (Proceedings resumed at 1:35 p.m.)

24 THE CLERK: All rise.

25 THE COURT: Good afternoon. Nice to see everyone.

1 Please be seated.

2 MR. PIERCE: Good afternoon, Your Honor --

3 THE COURT: Mr. Pierce?

4 MR. PIERCE: -- Matthew Pierce.

5 Good to see you again.

6 THE COURT: Good to see you again.

7 MR. PIERCE: Your Honor, I'm Matthew Pierce of
8 Landis Rath & Cobb on behalf of the FTX Recovery Trust, for
9 the record.

10 Your Honor, we're picking up on the agenda where
11 we left off where we broke this morning, which is Agenda
12 Item 44. I will turn it over to Mr. Dunne, who will handle
13 the balance of the agenda.

14 THE COURT: Great. Thank you so much.

15 MR. DUNNE: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 MR. DUNNE: Christopher Dunne from Sullivan &
18 Cromwell for the FTX Recovery Trust.

19 We are here to address certain threshold issues
20 relating to the Trust's amended objection to the claims filed
21 by Mr. Seth Melamed. As a brief reminder, Mr. Melamed has
22 filed five operative claims seeking approximately \$36
23 million. These claims arise from FTX's acquisition of a
24 company called "Liquid Group," of which Mr. Melamed was a
25 shareholder and an officer, as well as some subsequent

1 employment operations.

2 Mr. Melamed's principal claim, which is
3 Number 3385, relates to the Liquid share-purchase agreement,
4 sounds and fraud and breach of contract, and we refer to this
5 in our papers and I'll refer to it today as the "SPA claim."
6 The vast majority of the value that Mr. Melamed seeks to
7 recover across all of his claims comes from two buckets of
8 consideration that were set forth in the Liquid SPA and those
9 buckets are one million shares of FTX common stock; we call
10 that the "FTX consideration shares," and specified amounts of
11 particular cryptocurrency tokens, which were to be delivered
12 to Mr. Melamed in April 2023 and 2024, but we're not
13 delivered, of course, because FTX went into bankruptcy. We
14 call that the "crypto consideration." And as this Court is
15 aware, of course, Mr. Melamed has moved to compel
16 arbitration. The Liquid share-purchase agreement has a
17 Singapore law arbitration clause. The Trust opposes
18 arbitration.

19 At the May 14th hearing, Your Honor, the Court
20 determined that we would address three threshold issues
21 today: first, whether the portion of Mr. Melamed's claim
22 relating to the FTX consideration shares should be
23 subordinated, pursuant to Section 510(b) of the Bankruptcy
24 Code; second, whether the FTX plan of reorganization should
25 be applied to Mr. Melamed's claim relating to the crypto

1 consideration. As this Court is aware, the plan provides
2 that claims in respect of digital assets are valued using
3 petition date prices, as set forth in the digital assets
4 estimation order. And, third, the third threshold issue
5 being, whether any of Mr. Melamed's claims should be
6 liquidated in arbitration.

7 Before I begin, Your Honor, I would remind the
8 Court that both, the Trust and Mr. Melamed, have submitted
9 declarations of four law experts in connection with this
10 matter and at the May 14th hearing, the parties agreed that
11 these declarations should be admitted into evidence and to
12 forego cross-examination of the secured parties. The Court
13 subsequently also indicated that it did not have questions
14 for the experts, so the Trust respectfully moves to admit
15 into evidence the declarations of Mr. Taro Tanaka and
16 Mr. Ashok Kumar; those are the trust experts on Japanese and
17 Singapore law, respectively. Mr. Tanaka's and Mr. Kumar's
18 declarations were filed with the Court electronically at
19 Dockets 28646, 30365, and 30367.

20 THE COURT: Okay. Any objection?

21 MR. ADLER: None, Your Honor.

22 THE COURT: Okay. They're admitted into evidence.
23 Thank you very much.

24 (Tanaka Declarations received in evidence)

25 (Kumar Declaration received in evidence)

1 MR. DUNNE: Thank you, Your Honor.

2 With the Court's permission, I'll begin with
3 Section 510(b), subordination; the first threshold issue.

4 THE COURT: Okay.

5 MR. DUNNE: Your Honor, Section 510(b) provides
6 that claims for damages arising from the purchase or sale of
7 a security of the Debtor shall be subordinated.

8 Mr. Melamed's claim relating to the FTX
9 consideration shares plainly is such a claim. It is a claim
10 for damages and it arises from the purchase of FTX
11 securities, because Mr. Melamed received FTX common stock in
12 exchange for his Liquid shares. There's no dispute about
13 that.

14 If there were any doubt that Mr. Melamed's claim
15 must be subordinated, the policy underlying Section 510(b)
16 makes clear that it must be. Many courts have recognized
17 that in enacting 510(b), Congress made the decision to
18 subordinate based on risk allocation. And as the Third
19 Circuit has observed, Section 510(b) was enacted to stop
20 disappointed shareholders from, "bootstrapping their way to
21 parity with general creditors."

22 Mr. Melamed contracted for and received FTX
23 shares. He is transparently trying to put his claim ahead of
24 other shareholders by framing it as a claim for breach of
25 contract and for fraud. When Mr. Melamed sold his Liquid

1 Group shares to FTX, he could have negotiated for payment in
2 cash entirely. By agreeing to be paid in FTX shares, he has,
3 as the Third Circuit put it, assumed the risk of business
4 failure.

5 Now, in all of the papers he has filed in
6 connection with this claim objection proceeding, Mr. Melamed
7 has raised only two arguments against Section 510(b)
8 subordination. In the first, he has tried to really delay
9 adjudicating it, arguing that this Court should not consider
10 the matter until other issues, including arbitration, are
11 first resolved; the Court correctly rejected this at the
12 May 14th hearing.

13 Second, in response to his initial objection --
14 I'm sorry, in response to the initial claim objection that we
15 filed last year, he argued that the SPA was an agreement for
16 the sale of Liquid Group equity, not FTX equity, and that FTX
17 shares were, at best, incidental to the transaction. We
18 would submit that this argument is baseless and, notably,
19 Mr. Melamed did not raise it in response to the trust's
20 amended objection. The FTX consideration shares were hardly
21 incidental to the SPA; in fact, they comprised
22 approximately 60 percent of the compensation that Mr. Melamed
23 received in the transaction, and the substantial majority,
24 even more than 60 percent, of what he's currently seeking on
25 all of his claims now.

1 And, Your Honor, the fact that Mr. Melamed
2 acquired the FTX consideration shares as part of the Liquid
3 M&A transaction does not change the fact that they are
4 shares, the shares are equity of a debtor, and that his claim
5 must be subordinated. As in many similar M&A transactions,
6 Mr. Melamed paid for the FTX consideration shares by
7 tendering his Liquid shares to FTX. The same is true of many
8 claimants in many other cases whose claims were subordinated.
9 For instance, in both In re Kaiser Group International and
10 Peregrine Systems, these are cases cited at page 13 of the
11 trust's amended objection and page 8 of the trust's reply,
12 claimants received debtor equity as part of a share exchange
13 in a merger, and they subsequently sued for fraud and breach
14 of contract. In both cases, this Court subordinated the
15 claims, stating that they were squarely within the purview
16 of 510(b).

17 When Mr. Melamed entered into the SPA, he accepted
18 the FTX consideration shares and their associated risk as
19 partial consideration for the shares of Liquid that he
20 provided to FTX, and he must, therefore, assume the risk of
21 FTX's business failure.

22 Relatedly, Your Honor, Mr. Melamed's SPA claim
23 seeks indemnification of his legal fees that he's incurred in
24 this action pursuant to an indemnification provision in the
25 Liquid Group SPA. To the extent that Mr. Melamed is entitled

1 to any indemnification payments, and we of course contend
2 that he is not, those payments must also be subordinated
3 pursuant to 510(b). And that's because, Your Honor, in
4 addition to claims for damages arising from the sale of the
5 security of the debtor, Section 510(b) on its face calls for
6 subordination of claims for reimbursement or contribution on
7 account of such a claim.

8 This Court has consistently interpreted this
9 language to include fees incurred in connection with
10 litigation where the underlying claim is itself subordinated.
11 So, put differently, if the Court concludes that
12 Mr. Melamed's SPA claim should be subordinated, the legal
13 fees incurred in litigating that claim must also be
14 subordinated.

15 And pages 9 and 10 of the trust's reply cites
16 several cases making this proposition clear. This of course
17 also makes sense as a matter of policy for all the reasons
18 that go along with subordination of equity-related claims in
19 the first place and, as this Court has recognized, a contrary
20 rule would encourage frivolous litigation and disincentivize
21 settlement, all at the expense of FTX's other creditors.

22 I'll now address, Your Honor, the second threshold
23 issue, the crypto consideration. As a reminder, Your Honor,
24 the Liquid SPA provided that Mr. Melamed was to receive
25 specified amounts of particular crypto currency tokens, which

1 were to be delivered to him in April of 2023 and April
2 of 2024, which were not delivered, again, because FTX went
3 bankrupt.

4 Unsurprisingly, and as Your Honor is well aware,
5 the Court and all stakeholders gave substantial attention to
6 the question of how to deal with digital assets when forming
7 the FTX plan of reorganization, and the plan provides that
8 the value of a claim in respect of digital assets is
9 calculated by converting the value of the digital assets in
10 question into cash as of the petition date in accordance with
11 conversion rates set forth in the separate estimation order.

12 Now, Your Honor, the estimation order, as my
13 partner Mr. Glueckstein knows all too well, was the linchpin
14 of the plan itself, it was the subject of multiple contested
15 hearings, competing expert testimony, and consideration of
16 over 150 objections from various stakeholders. It was
17 intended to and, by its plain terms, does encompass all
18 claims of any type relating to digital assets, which, without
19 exaggeration, number in the millions. This includes
20 everything from claims brought by FTX lenders for repayment
21 of digital asset loan claims to claims brought by FTX
22 customers for digital assets held in their customer accounts.

23 Mr. Melamed is not entitled, Your Honor, to
24 special treatment, his claim for the crypto consideration
25 clearly falls within the plan's definition of a claim in

1 respect of digital assets and it should be valued
2 accordingly. To get very granular about it, it is a claim,
3 as that term is broadly defined in the plan and the
4 Bankruptcy Code, and the plan of course incorporates the
5 Bankruptcy Code's definition, because it's a right to payment
6 regardless of whether or when it was reduced to a judgment,
7 liquidated, unliquidated, and all the other myriad features
8 set forth in the Bankruptcy Code. And it is of course in
9 respect of digital assets because Mr. Melamed was promised
10 specified crypto tokens and he's seeking to recover value
11 associated with those tokens.

12 Now, Mr. Melamed, notably, has not challenged the
13 trust's characterization of his claims for the crypto
14 consideration as a claim in respect of digital assets under
15 the plan, he just wants a different valuation framework and
16 valuation date.

17 Mr. Melamed argues that the crypto consideration
18 should be valued at the time the SPA was breached. I want to
19 be very clear about one thing from the outset, whether FTX
20 breached the SPA and when that breach occurred, assuming it
21 did, does not matter, the plan provides for one treatment of
22 claims in respect of digital assets, regardless of how that
23 is characterized, and that treatment is valuation as of the
24 petition date using the estimation order.

25 When FTX filed for Chapter 11, as a practical

1 matter, Mr. Melamed had the right to receive specified
2 digital assets on April 4th, 2023 and April 4th, 2024. It's
3 clear from the face of the SPA, which even defines the crypto
4 consideration as the retained consideration because it was
5 supposed to be retained at closing and released later.
6 Although Mr. Melamed highlights the fact that there was a
7 side letter to the SPA that states that the crypto
8 consideration was paid on the completion date, he
9 acknowledges in paragraph 19 of his SPA claim that FTX was
10 entitled to retain that consideration and to release it in
11 April of 2023 and 2024.

12 So, in short, Your Honor, what Mr. Melamed had on
13 the petition date was a contractual right to digital assets,
14 this makes him exactly like millions of other creditors, and
15 Judge Dorsey correctly rejected arguments for prepetition
16 valuations of crypto assets in formulating the estimation
17 order. Mr. Melamed, again, is not entitled to special
18 treatment, the plan applies to his claim just as it does to
19 anyone else who has a claim in respect of digital assets.

20 And finally, Your Honor, the threshold issue of
21 arbitration. First, the Court must address the question of
22 which of Mr. Melamed's claims are even covered by an
23 arbitration clause; this is Mr. Melamed's burden to prove.
24 Mr. Melamed has asserted five claims, he moves to compel
25 arbitration of all five of them based on an arbitration

1 clause contained in the SPA, but that arbitration clause
2 relates at most to the SPA claim. Mr. Melamed concedes that
3 the portion of his administrative claim relating to the KEIP
4 is not arbitrable. Mr. Melamed's claims for prepetition
5 compensation for bonus payments and, he contends, the non-
6 KEIP portion of his administrative claim are governed by a
7 separate management agreement, not the SPA.

8 Mr. Melamed argues that the management agreement
9 claims are arbitrable because the management agreement itself
10 arises from the SPA. The management agreement of course does
11 not contain an arbitration clause, it contains a very
12 different clause, which I'll discuss in a moment.

13 So, Mr. Melamed is wrong for several reasons.
14 First, and importantly, Singapore law governs the SPA's
15 arbitration clause. Mr. Melamed has not offered the
16 testimony of any Singapore law expert or any analysis under
17 Singapore law whatsoever. The trust's Singapore law expert,
18 Mr. Kumar, has explained that an arbitration clause in one
19 contract does not extend to disputes arising out of a second
20 independent contract even where the second contract is
21 specifically contemplated by the first. This is especially
22 the case here because the second contract, the management
23 agreement, not only makes no mention of arbitration it
24 specifically confers the Tokyo district court with exclusive
25 jurisdiction over disputes arising from that agreement.

1 Second, Your Honor, Mr. Melamed has cited one
2 Southern District of New York case in support of his
3 argument, that case is Celsius Mining, but that case does not
4 help him. The arbitration provision in Celsius Mining,
5 stated in bolded, capitalized letters that the arbitration
6 clause covered any dispute of any nature between the parties
7 relating in any way to this agreement. In light of that, the
8 Celsius Mining court concluded that there was no requirement
9 that the dispute arise under or even be in connection with
10 the agreement in order to be arbitrable, and it held that the
11 provision extended to disputes arising out of not just the
12 main agreement, but a related promissory note as well. Here,
13 to fall within the arbitration clause, disputes must arise
14 out of or in connection with the SPA. So the provision does
15 not extend as far as the one in Celsius Mining.

16 Mr. Melamed has not responded to these points
17 ever, not once. Instead, what Mr. Melamed has chosen to do
18 is to argue for the first time in his reply brief that he
19 does not need to demonstrate that a valid arbitration
20 agreement governs his claims because the question of
21 arbitrability should be decided by the arbitrator and not by
22 this Court. Your Honor should disregard this argument, it
23 was raised for the first time last week in what was
24 Mr. Melamed's fourth submission on the subject of
25 arbitrability. This is, in our view, a transparent attempt

1 to take the question out of this Court's hands at the
2 eleventh hour because Mr. Melamed apparently has decided that
3 he does not want Your Honor to rule on it.

4 But to be clear, Your Honor, Mr. Melamed is wrong.
5 Even as a matter of U.S. law, the SPA's incorporation of the
6 rules of the Singapore International Arbitration Center does
7 not end the Court's inquiry here. The U.S. Supreme Court has
8 made clear that the Court should decide the issue of
9 arbitrability unless there's clear and unmistakable evidence
10 that the parties intended to submit that question to the
11 arbitrator. The Richardson case from the Third Circuit on
12 which Mr. Melamed relies itself states that even where an
13 agreement incorporates in that case it was the AAA rules, a
14 contract might still otherwise muddy the clarity of the
15 parties' intent to delegate. And, notably, none of the cases
16 that Mr. Melamed cites involve multiple contracts with
17 inconsistent dispute resolution provisions, which is exactly
18 what's present here and which clearly affects the analysis.
19 In situations like that, many cases have held that the Court
20 should not reflexively delegate the question of arbitrability
21 to the arbitrable panel.

22 But to the extent that the Court is inclined to
23 hear more on this topic, notwithstanding the fact that
24 Mr. Melamed did not raise it until now, the trust would
25 request leave to file a surreply, if the Court is inclined to

1 read one.

2 Now, Your Honor, even with respect to
3 Mr. Melamed's motion to compel arbitration on the SPA claim,
4 that too should be denied because there Your Honor still has
5 discretion not to compel arbitration. The Supreme Court has
6 held that Bankruptcy Courts may decline to compel arbitration
7 where there's an inherent conflict between arbitration and
8 the Bankruptcy Code's underlying purposes. And this Court
9 held in In re Yellow that the Third Circuit case law does not
10 prohibit the Court -- I'm sorry, does not require the Court
11 to enforce a prepetition arbitration clause in the context of
12 a claim objection. It's more nuanced than that. The Yellow
13 court distinguishes the Mintz case, on which Mr. Melamed
14 relies, on the grounds that claims allowance disputes involve
15 the Bankruptcy Court's *in rem* jurisdiction and, unlike the
16 Truth in Lending Act claim that was at issue in Mintz, claims
17 allowance disputes arise out of Section 502 of the Bankruptcy
18 Code, which states that Bankruptcy Courts shall determine the
19 amount of contested claims and whether to allow them.

20 THE COURT: Should I give any significance to the
21 fact that the Yellow court focused on perhaps the wrong --
22 well, let me ask this a different way.

23 In Mintz, the court focused on the cause of action
24 that was alleged by the parties, as have many, many, many
25 courts in conducting the analysis of whether we should defer

1 or not defer, or apply discretion or not apply discretion.
2 Yellow looked a little broader and said -- it didn't
3 necessarily look at the cause of action that was being
4 alleged, but looked at the proceeding and now it was brought
5 to the court. So, the focus there was on the proceeding, the
6 claims objection process.

7 MR. DUNNE: So, I'm sorry, what was your question,
8 Your Honor?

9 THE COURT: Well, I'm trying to formulate --

10 MR. DUNNE: Oh, okay.

11 THE COURT: -- my question, which is, that seems
12 to be a break in the application of the law, quite frankly.

13 So, is the focus really on the nature of the
14 proceeding, or is the focus more rightly on the cause of
15 action that's being alleged?

16 MR. DUNNE: I think, under this Court's
17 jurisprudence, we can't ignore the context in which the claim
18 alleges.

19 THE COURT: Well, you would agree with me that
20 that was *dicta*?

21 MR. DUNNE: That what was *dicta* precisely, Your
22 Honor?

23 THE COURT: Well, so in Yellow the issue turned on
24 whether he should lift the stay, but the court then went on
25 to conduct this analysis when it was not needed. The issue

1 before the court turned on whether he had the discretion to
2 lift the stay --

3 MR. DUNNE: Right.

4 THE COURT: -- and it could have ended then and
5 there, but it went on to talk about whether --

6 MR. DUNNE: In part because --

7 THE COURT: -- the FAA should yield or -- sorry,
8 whether the court should require mandatory arbitration if the
9 issue was not really the lift stay.

10 MR. DUNNE: Yeah, the lift stay issue was a little
11 bit complicated there because the court did, I think,
12 acknowledge that a motion to lift the stay had not formally
13 been made, but nonetheless construed the claimant's request
14 as one to lift the stay, and then to move to compel
15 arbitration. But I think the different is in -- or at least
16 in part in that the claimant had come to the Bankruptcy Court
17 seeking to assert a claim against the estate and this issue
18 had arisen in that context, whereas in Mintz the plaintiff --
19 or the estate, the debtor was going out and bringing solely
20 non-bankruptcy claims against, in that case, the defendant,
21 essentially a federal claim under the Truth in Lending Act.

22 So I do think that context is significant, I will
23 agree, of course, it's not dispositive.

24 THE COURT: So, if this issue was arisen in an
25 adversary proceeding as opposed to the claims objection,

1 should that change my mind?

2 MR. DUNNE: If the issue had --

3 THE COURT: Is that a different analysis under
4 Mintz then? Because Yellow even -- the court in Yellow even
5 acknowledged that the issue that was raised in the adversary
6 was really an objection to the secured claim of the lender,
7 but nonetheless it was alleged in an adversary proceeding and
8 that's a two-party dispute. Is that the focus here? Is that
9 the correct framework by which I should analyze whether I
10 have discretion to disregard an arbitration provision?

11 MR. DUNNE: I think -- I do think it's important
12 that we not forget the context that we're in, that we not set
13 that aside completely, which I think the court in Yellow did
14 acknowledge the point that you are making and noted that the
15 posture could have arisen in a different way potentially, but
16 it had not and, in light of the fact that it had not and the
17 significance of the claims allowance process and the mandate
18 that appears in Section 502, which charges this Court to
19 value and determine whether to allow claims, that it had to
20 undertake the analysis that it did.

21 So, I think I understand your question. I don't
22 think I -- your initial question, I don't think I would
23 regard it as *dicta*. I think in light of that context,
24 the 502(b) context, the Court had to grapple with 502(b)'s
25 language, and it did so, and it still had flexibility to

1 reach either outcome under that framework.

2 THE COURT: Okay.

3 MR. DUNNE: And we would submit, Your Honor, that
4 the Court should reach the same resolution that the Yellow
5 court did here. Sending Mr. Melamed's claim to arbitration
6 would frankly result in the waste of both estate assets and
7 Mr. Melamed's assets, as well as considerable delay.

8 As we have discussed, only one of Mr. Melamed's
9 claims is arbitrable and substantially all of the value of
10 that claim turns on the threshold issues of 510(b)
11 subordination and application of the plan, which all parties
12 agree must be decided by this Court. And regardless of the
13 outcome here, to add another layer, the matter must still
14 come back before this Court on the issue of equitable
15 subordination, which we all agree. So, in short, both
16 parties would benefit from this Court retaining jurisdiction.

17 Now, one last point, Your Honor, before I step
18 down, Mr. Melamed argues in his reply brief that the Court
19 should impose a procedural framework in which the Court
20 compels arbitration and stays all other proceedings until
21 this matter is finished. That is clearly an attempt, in our
22 view, to re-litigate what Your Honor ruled at the May 14th
23 status conference, and what I think we're doing right now,
24 and should be disregarded. The Court may rule on all of the
25 threshold issues now, it has the authority to do that, and a

1 decision on them will frankly, likely lead to a prompt
2 resolution of this entire claim.

3 THE COURT: Are subordinated claims receiving any
4 distribution in this case?

5 MR. DUNNE: I believe that they are not expected
6 to receive any distribution.

7 THE COURT: Okay.

8 MR. DUNNE: I'll turn -- I'm looking at
9 Mr. Glueckstein?

10 MR. GLUECKSTEIN: Your Honor, at this point, like
11 in any plan, it's unknown, but it is not estimated that -- it
12 is not predicted at this point that subordinated claims will
13 receive a distribution. There are billions of dollars of
14 subordinated Government claims that would have to be paid
15 before you could ever get to that level.

16 THE COURT: Okay.

17 MR. GLUECKSTEIN: But we of course, the trust
18 continues to -- you know, to look for assets, so we don't
19 know.

20 THE COURT: Okay, I appreciate that. There were
21 many, many, many classes of the plan and I don't have it
22 fully committed to memory, so thank you.

23 MR. DUNNE: Me either, Your Honor. Unless there
24 are further questions from the Court, that's all I have.

25 THE COURT: I don't have anything further at this

1 time. Thank you very much.

2 MR. DUNNE: Thank you, Your Honor.

3 THE COURT: Mr. Adler.

4 MR. ADLER: Good afternoon, Your Honor, David
5 Adler --

6 THE COURT: Good afternoon.

7 MR. ADLER: -- from McCarter & English on behalf
8 of Seth Melamed. With me today in court is Ms. Chelsea
9 Botsch from our Wilmington office.

10 I wanted to begin just as Mr. Dunne began. We
11 would like to move into evidence the three declarations we
12 submitted in connection with our opposition to the amended
13 claims objection in April, and those are the declaration of
14 Ryo Kawabata, and that is Document Number 30078, there is a
15 declaration of Takane Hori, which is 30079, and then there's
16 a second declaration of Ms. Hori, which is 30080.

17 THE COURT: Okay. Well, based on the
18 representations, there's no objection, but I'll just ask for
19 the record for you to confirm.

20 MR. DUNNE: Correct, no objection, Your Honor.

21 THE COURT: Okay, great. They're admitted into
22 evidence. Thank you.

23 (Declaration of Ryo Kawabata received in evidence)

24 (Declarations of Takane Hori receive in evidence)

25 MR. ADLER: Thank you, Your Honor.

1 So, I wanted to step back and go to the beginning
2 because we were thrown -- or the Court was sort of presented
3 with this in the middle of the dispute and I wanted to take
4 it back to 2021, which is when Mr. Melamed, who was a 22-
5 percent shareholder, agreed to sell his interests, and the
6 rest of Liquid's shareholders agreed to sell their interests,
7 to FTX.

8 Now, Liquid was a holding company that had two
9 exchanges underneath it, one that operated in Japan and one
10 that operated in Singapore. The Japanese entity had a
11 license, a crypto license, which made it extremely valuable.
12 So that license required that a company that operates an
13 exchange would hold customer crypto in custody, and the
14 customers of FTX Japan received, unlike any other creditor in
15 this case, their distributions in kind 100 percent.

16 Now, Mr. Melamed and the rest of the shareholders
17 entered into this agreement in November of 2021, and the
18 completion date was -- the closing date took place on
19 April 4th, 2022. And under the agreement, which was
20 referenced before, Mr. Melamed was entitled to several
21 different forms of consideration; he was entitled to \$8.9
22 million, which was crypto-currency, which was set aside for
23 him, he was entitled to slightly more than a million shares
24 of FTX common stock. He also received indemnities from the
25 debtor for any misrepresentation that was made on account of

1 the SPA. And the SPA was very clear as a condition to
2 closing that a management agreement had to be entered between
3 Mr. Melamed and FTX and the FTX entities.

4 So that was a condition that was required as part
5 of the closing and it took place on April 4th. Mr. Melamed
6 stayed on at FTX Japan, which is, you know, the old Liquid,
7 the filing took place. He stayed on as the COO of the
8 company, getting -- interacting with the Japanese regulatory
9 authorities, getting their approval to reopen the withdrawal
10 window, and he stayed on actually until the FTX entity was
11 sold to, I think it was bitFlyer, in July of last year. So
12 he started prepetition and continued all the way up to
13 approximately 11 months ago.

14 Now, for purposes of the claim, I want to direct
15 the Court's attention to the SPA and particular 7.2, which
16 are representations and warranties made by FTX Trading. And
17 that representation -- those representations and warranties
18 refer to Part B of Schedule 6, which is, if you look at -- I
19 think it's the last item in Schedule 6, Number 8 says that
20 all information contained in this agreement and all other
21 information furnished by or on behalf of the purchaser to the
22 sellers before and during the negotiations leading up to the
23 agreement is true and correct in all material respects.

24 Well, I guess that did not turn out to be true, as
25 we all know, and there's a separate representation that's

1 made that all statements in the disclosure documents are true
2 and accurate.

3 Now, the disclosure documents are the documents
4 that were actually provided to the Japanese regulatory
5 authorities. So, as I understand it, Liquid was sort of
6 acting as a conduit of information to the JFSA in order to
7 get their approval to let FTX buy the shares, but that's
8 another representation that obviously turned out not to be
9 accurate.

10 The section of the SPA that is very relevant to
11 this proceeding is Section 9.3, which is the indemnity, and
12 it essentially covers all losses, which is very, very broadly
13 defined to mean all costs, losses, liabilities, damages,
14 claims, demands, proceedings, expenses, penalties, and legal
15 and other professional fees, occurring on account of breach
16 of representations and warranties made by the purchaser.

17 So, in the proof of claim, which is Claim
18 Number 3385, it states, claimant asserts a general unsecured
19 non-subordinated claim against the debtor of not less
20 than \$35,613,112.19, which represents the purchase price of
21 the Liquid shares less actual cash received, the retained
22 consideration the debtors' obligation to indemnify claimant
23 in connection with the purchase of LGI shares. So that is
24 one of the items that is specifically identified in
25 Claim 3385.

1 With that as background, Your Honor, I think that,
2 from my perspective, the first threshold issue among the
3 threshold issues is our cross-motion to compel arbitration.
4 And for that I want to refer to Section 19.1 of the SPA,
5 which says Japanese law controls the agreement, and
6 Section 19.2, which states that any dispute, controversy, or
7 claim arising in any way out of or in connection with this
8 agreement shall be submitted to binding arbitration
9 administered by the Singapore International Arbitration
10 Center in accordance with the SIAC rules in force when the
11 notice of arbitration is submitted, which rules are deemed to
12 be incorporated by reference into this clause.

13 So, turning to the case law -- and I'm thinking
14 about Mintz and Hayes -- the first question is, is there a
15 valid and enforceable arbitration agreement. Well, the
16 debtors haven't submitted any declarations that challenge the
17 arbitration agreement. They acknowledge that it's an
18 enforceable agreement; they just say that it doesn't apply to
19 everything in this case, just to the SPA. So, at least on
20 the threshold inquiry of whether there's a valid and
21 enforceable arbitration agreement, the answer is yes.

22 And the next question becomes, if there's an
23 arbitration agreement that's valid, does the scope of the
24 arbitration get delegated to the arbitrator. And Mr. Dunne
25 made, you know, some statements that I raised it for the

1 first time in my reply, the Henry Schein Supreme Court case
2 that basically says, you know, if there's a delegation, it
3 needs to be enforced, that was in response to the trust's
4 statement that we had the burden of proof on it. I don't
5 think that's the appropriate inquiry when there's a
6 delegation provision. So that -- the reason why we cited
7 Henry Schein and the Celsius/Mohsin case was in response to
8 their statement that we have the burden of proof.

9 And what those cases stand for is essentially
10 that, when there's a delegation, the Court possesses no power
11 to decide the arbitrability issue and what one looks at is
12 the arbitration agreement itself. And so if you're looking
13 at the arbitration agreement under Section 19.2 of the SPA, I
14 mean, I think it's pretty clear that the management agreement
15 arises out of the SPA, it was a condition to the closing that
16 that management agreement be executed.

17 So that, along with the incorporation of the SIAC
18 rules -- and I think we referred to in our reply the SIAC
19 rule, I think it's 28.1, that is the same as the AAA
20 Rule 7(a) that says that the arbitrators possess the
21 authority to determine the scope of their own arbitration.
22 So the provisions that the courts are looking at in Henry
23 Schein and in Mohsin are identical to the SIAC provision, and
24 when those rules are incorporated, I think it means that
25 essentially the Court has to defer in the first instance to

1 the arbitrator to decide what the scope of the arbitration
2 is.

3 Now, even I can't say that the court in Singapore
4 should be deciding what the Court -- what this Court
5 determined in connection with the KEIP, okay? There's a
6 court order that says, you know, it's a key employee
7 incentive plan and, if certain conditions take place, the
8 claimant is entitled to an award. Okay, I cannot see that
9 that would be subject to arbitration. Okay? That's just the
10 Court exercising its own authority to enforce its orders.

11 So I specifically referenced in the reply that
12 we're not taking the position that that claim needs to be
13 determined or whether the scope of the arbitration would
14 include that claim. I acknowledge that that claim stays here
15 because it's already subject to a court order.

16 And on that line I just want to note that the
17 Third Circuit case of Richardson says that when there's a
18 clear and unmistakable delegation of arbitrability issues to
19 the arbitrator, which the Circuit found was -- you know,
20 happened when the parties included the rules in the
21 arbitration clause, that the court essentially has to defer
22 the scope of the arbitration to the arbitrator.

23 So, along that line, once we get past the scope, I
24 think the Court has to ask itself whether there are reasons
25 why the arbitration conflicts with Federal Bankruptcy law,

1 and we said in our reply that we don't think it does. We are
2 not saying that the arbitrator is going to be determining the
3 Section 510(b) issue or the interpretation of the plan; it's
4 just going to be the adjudication of the claim. And that
5 happens all the time, you know, despite the trust's position
6 that the goal of bankruptcy is the centralization of all
7 disputes and claims, I mean, courts frequently grant stay
8 relief for claims to be liquidated in state court, courts
9 permissibly and mandatorily abstain from adjudicating
10 disputes. You have the Rooker-Feldman doctrine, which
11 basically -- you know, if there's a matter in state court, it
12 has to go through the appellate process, not come to the
13 Bankruptcy Court along the way.

14 So, there are many, many, many instances -- and,
15 obviously, personal injury claims and wrongful death claims
16 are not adjudicated in the Bankruptcy Court -- there are
17 many, many, many instances where the Bankruptcy Court does
18 not adjudicate the claim and it's left to the state court,
19 despite the trust's desire that the Bankruptcy Court
20 determine all claims.

21 So we don't think that there is a direct conflict
22 because claims are adjudicated in other forums all the time,
23 and we're not saying to the Court that the arbitrator is
24 going to decide the Section 510(b) issue or the
25 interpretation of the plan. We're going to have to come back

1 here and the Court is going to have to determine those
2 issues, but we do think that it is appropriate for the claim
3 to be liquidated in the first instance in the arbitration
4 because there are a lot of factual issues here, Judge, that I
5 think need to get fleshed out before this Court can make a
6 ruling.

7 And what I'm referring to is there's a disputed
8 factual issue about whether there was a breach of contract
9 prepetition, okay? They say it doesn't matter, whether
10 it's -- whether there's a breach of contract or not, the
11 result is the same. I'm not so sure about that, Your Honor,
12 especially in light of the fact that Japanese law is
13 applicable here, I don't know whether that is the case and,
14 even if it were the case --

15 THE COURT: What claim are you -- I'm sorry, just
16 to clarify, what claim are you talking about?

17 MR. ADLER: So with -- in the declarations of the
18 foreign law experts we submit -- we submitted a declaration
19 that said the retained consideration was required to be paid
20 on April 4th, 2022, and the failure to pay it on
21 April 4th, 2022 was a breach of contract, which allowed
22 Mr. Melamed to go to arbitration and get a damages award as a
23 result of their breach of contract. And I think you can see
24 that in Document Number 30079, paragraphs 16 and 17. Our
25 expert says, in my opinion, if a Japanese court or arbitral

1 panel applying Japanese law were to examine clause 2.1(d) of
2 the side letter and the side letter schedule, it would
3 conclude that there was a modification to clause 2.4(d) of
4 the SPA. Accordingly, it is my opinion that a Japanese court
5 or arbitral panel applying Japanese law would conclude that
6 by not paying the retained consideration to Melamed on the
7 completion date, FTX was in breach of the SPA and side
8 letter.

9 Then our expert goes on to say that, if FTX were
10 determined to have breached the SPA and side letter, it is my
11 opinion that a Japanese court or arbitral panel applying
12 Japanese law would award money damages in an amount equal to
13 the value of the retained consideration as of the date of the
14 breach, along with interest of three percent per annum on the
15 overdue sum, with interest accruing daily, and a statutory
16 late penalty of three percent per annum on the foregoing,
17 pursuant to Article 404-2 of the Japanese Civil Code.

18 So Mr. Tanaka, their expert, says that there was
19 not a breach. And if you look at the Hori
20 declaration, 30079, she explains in detail why Mr. Takana is
21 incorrect in his assessment that there was not a breach of
22 contract.

23 All of this is to say, Your Honor, is that there
24 are disputed factual issues, and I'll come to another one as
25 we go forward, and that is the indemnity.

1 THE COURT: On the retain consideration argument,
2 even if I sent it to arbitration and even if the arbitrator
3 determines, as your experts have determined, it still needs
4 to come back to me for allowability and classification,
5 correct?

6 MR. ADLER: Correct.

7 THE COURT: And I would have to apply the plan?

8 MR. ADLER: Correct.

9 THE COURT: Okay.

10 MR. ADLER: We do not dispute that.

11 THE COURT: So, there would be an argument at that
12 point that I would have to take that claim and apply the
13 estimation order to it, correct?

14 MR. ADLER: Right.

15 THE COURT: Okay.

16 MR. ADLER: I mean, then argument and --

17 THE COURT: So we would get there one way or the
18 other?

19 MR. ADLER: Correct.

20 THE COURT: Okay. So it's really a timing issue?

21 MR. ADLER: Correct.

22 THE COURT: Okay.

23 MR. ADLER: Now, I was just about to talk about
24 the indemnity claim. Now, here, the record is pretty much
25 barren because it was identified in the proof of claim, but,

1 for example, let's suppose that there, in the negotiation
2 leading up to the SPA, there is a discussion over how the
3 retain consideration is to be handled. Let's suppose that it
4 was going to be cash put aside and they convince Mr. Melamed,
5 based on the representations and warranties that crypto would
6 be held in custody, that -- to set it up that way. That's
7 separate and apart from the breach of contract issue; in
8 other words, the formation, the modality of how the retain
9 consideration was to be held, okay.

10 If misrepresentations were made, it is my opinion
11 that those issues should be flushed out factually. I would
12 take the position that that does not relate to a digital
13 asset, okay; that relates to the formation of a contract and
14 the agreement to structure it in a certain way, not in
15 respect of a digital asset, under Section 4.4 of the plan.

16 And I think that we would say, obviously, that
17 Your Honor would have the final say, but we think that the
18 record should be developed exactly what the scope of the
19 indemnity is and what the amount is and that there are
20 disputed factual issues as to, you know, along the way. So
21 that's why we think this is premature to be decided today
22 because Your Honor just has a lot of legal argument in front
23 of her; not that much facts. And we think that the
24 development of a factual record will assist the Court in
25 ultimately determining whether or not, you know, the 510(b)

1 argument applies and whether the plan Section 4.4 applies,
2 so --

3 THE COURT: So there's a portion of your -- and
4 forgive me that I don't know the answer, despite reading the
5 pleadings -- but so that the indemnification claim, has that
6 fully been flushed out, what the indemnification looks like?

7 MR. ADLER: Well, I think from --

8 THE COURT: What is the claim amount and how --
9 what's it relating to?

10 MR. ADLER: Well, I think that there's -- I mean,
11 if you take it, there's indemnity as a result of
12 misrepresentations, right. So you have misrepresentations as
13 to the financial condition of FTX, right --

14 THE COURT: Uh-huh.

15 MR. ADLER: -- which, you know, relates to a lot
16 of different things. It relates to the agreement of
17 Mr. Melamed to take part of the, or to set up the retain
18 consideration in the way that it was set up. Obviously, it
19 relates to the stock itself, right. Mr. Melamed was relying
20 on the reps and warranties and the audited financial
21 statements when he and the other shareholders made the
22 decision to sell to FTX.

23 There are also, obviously, claims for legal fees
24 and other professional fees. Mr. Melamed has lawyers in
25 Japan, Singapore, here, you know, which would need to be

1 quantified. And there would -- there are some other issues
2 related to the indemnity, as well, but it would generally
3 deal with the formation of the contract and, you know, the
4 events subsequent to the bankruptcy until the implosion of
5 FTX.

6 So, from our -- and I said it, but I think that
7 the consideration of the 510(b) issue is premature because
8 the liquidation should happen first, a factual record should
9 be built out, and then this Court can consider that, prior to
10 determining the allowability of the claim.

11 And it's the same thing with respect to the plan;
12 the plan says the value of the claim in respect of a digital
13 asset shall be calculated by converting the value of such
14 digital asset into cash as of the petition date. Well, there
15 are a lot of different things floating around here and, you
16 know, one of the first issues is the breach of contract
17 issue, which the experts disagree on. And, you know, if
18 there's a claim for, an indemnity claim for misrepresenting
19 the financial condition of FTX, does that relate or is that
20 in respect of the digital asset?

21 I don't think so. I think that has to do with a
22 misrepresentation that was made at the time of the formation.
23 But I think that these are issues that the Court is going to
24 have to grapple with as, you know, once a record is built
25 out.

1 Now, I just wanted to respond a little bit to your
2 question about Yellow. When I look at Yellow, what I see is
3 a hotly contested bankruptcy, where there's a claim by the
4 PBGC, which will swamp everything. And so the whole case is
5 essentially on ice until that claim is quantified.

6 And, you know, we don't have that situation here.
7 FTX is out of bankruptcy. The Trust is in charge of
8 liquidating the assets and quantifying the liabilities. So
9 this case is very different than Yellow.

10 I'd also say that one of the points that Judge
11 Goldblatt looked at was the fact that even if the claim went
12 to arbitration, it still had to come back to an Article 3
13 Court. So there was sort of a, you know, no harm, no foul,
14 you know, issue floating around because it had to come back
15 to an Article 3 Court in any event. And that, coupled with
16 the fact that it was a multiparty dispute -- if I remember
17 correctly, it was one of the general unsecured creditors who
18 had filed the objection. So you had the Debtor, some
19 creditors, the PBGC all fighting over this one issue. And
20 the Court was concerned over the fact that, you know, if it
21 went to arbitration, the creditors, the general unsecured
22 creditors might be iced out of that proceeding. So, from our
23 perspective of looking at it is sort of like an issue that
24 everything is dependent upon: the quantification of that
25 liability.

1 And this is completely the opposite. I mean, this
2 is a large claim to my client, but it's a very small claim in
3 the realm of FTX.

4 THE COURT: So, regardless if I find whether I
5 have discretion or not --

6 MR. ADLER: Right.

7 THE COURT: -- if I fall into Yellow's decision
8 that I have discretion --

9 MR. ADLER: Right.

10 THE COURT: -- that I should not exercise the
11 discretion?

12 MR. ADLER: Right.

13 And we did make that point that the Singapore
14 Court is better equipped. You know, speaking for myself,
15 dealing with the Japanese lawyers, I don't really understand
16 civil law and, you know, there are -- it's completely a Civil
17 Code country. And we think that Singapore, the SIAC would be
18 the better -- has more experience in terms of dealing with
19 those matters and in terms of dealing with the liquidation of
20 these types of claims. It's apparently a very common
21 procedure to resolve claims in this manner.

22 So, you know, for the reasons that we set forth in
23 the reply, we would ask that our cross-motion to compel
24 arbitration be granted and that the Court, essentially,
25 either direct the arbitrator to determine the scope of the

1 arbitration or put the claims related to the management
2 agreement on hold, pending that determination, so that when
3 we do have to deal with these issues, it can be done in a
4 coordinated fashion and not piecemeal.

5 And with that, Your Honor, do you have any
6 questions?

7 THE COURT: I do not at this time.

8 MR. ADLER: Thank you.

9 THE COURT: Okay.

10 MR. DUNNE: Very briefly, Your Honor.

11 Mr. Adler said a lot there, Your Honor, on the
12 background on the entities and what customers received and
13 why that may have been. And I would just remind the Court
14 that none of that is before Your Honor today. There were
15 three threshold issues before Your Honor today.

16 Significantly, Mr. Adler conceded just now that
17 the consideration that Mr. Melamed was to get in the SPA took
18 the form of FTX stock and specified cryptocurrency. That
19 ends the inquiry on Section 510(b) subordination and plan
20 application.

21 And as Your Honor pointed out in colloquy with
22 Counsel, those are things that you can decide now. Those are
23 things that will ultimately have to come back to you know
24 matter what is decided in an arbitration.

25 Mr. Adler also brought up a lot of things that his

1 experts say on the merits; obviously, both sides have
2 parties -- I'm sorry -- both sides have experts who have
3 views on the merits. The reason that those experts aren't
4 here today and why both sides aren't cross-examining them is
5 that those things don't matter for purposes of this hearing.
6 We are dealing with purely legal issues that are clearly
7 before Your Honor and which all parties acknowledge must be
8 decided by this Court.

9 The other thing I would mention, Your Honor, is
10 Mr. Adler read a portion of the arbitration clause from the
11 SPA to you. He omitted Section 19.4, I think, which says
12 that the arbitration agreement, in Clause 19, shall be
13 governed by the laws of Singapore, on which he has offered
14 neither evidence, nor argument.

15 And with respect to the various indemnification
16 arguments that Mr. Adler raised, I would simply point out
17 that the SPA indemnifies losses arising from breach of the
18 agreement. For purposes of the issues the Court is looking
19 at today, it does not matter whether the agreement was
20 breached or not, because Section 510(b) subordination
21 applies, regardless of whether it is a fraud in the issuance
22 of securities or sale of securities or some breach of
23 contract or otherwise.

24 And, regardless, the crypto consideration piece
25 was a claim in respect of digital assets. They're specified

1 digital assets -- he doesn't dispute that -- and he ascribes
2 value to them based on those digital assets.

3 THE COURT: If there's an indemnification claim
4 arising from the cryptocurrency dispute, are you seeking to
5 subordinate that.

6 MR. DUNNE: Yes, Your Honor.

7 We believe that we could seek to subordinate. We
8 could properly seek to subordinate any claim associated with
9 the SPA on 510(b) grounds. The case law on 510(b)
10 subordination is extremely broad; it extends to all claims
11 that even emanate from a contract or a claim relating to a
12 sale of securities of the Debtor.

13 We have taken the position, however, in this claim
14 proceeding that the best treatment of that claim is under the
15 plan as a claim in respect of digital assets and we have not
16 sought to subordinate the entire SPA claim, which would have
17 been our right to do.

18 THE COURT: But just the indemnification portion?

19 MR. DUNNE: The indemnification portion, it is
20 impossible to disentangle indemnification relating to the
21 crypto consideration piece from all of the other arguments;
22 it's one litigation that's essentially been brought.

23 THE COURT: Uh-huh.

24 MR. DUNNE: And, frankly, we believe that 510(b)
25 subordination could apply to every aspect on this, even the

1 crypto consideration piece.

2 THE COURT: Okay. Thank you.

3 MR. DUNNE: Thank you, Your Honor.

4 THE COURT: Okay. Well, I'm going to take this
5 matter under advisement and I will attempt to rule promptly,
6 either orally or by written opinion.

7 Thank you for reserving the afternoon for this.
8 It turns out we didn't need to do that because you are all so
9 efficient and I very much appreciate that, but that meant you
10 all had to come down here in the afternoon and then stay,
11 so -- but it is what it is. I'm glad that we had the
12 opportunity to tackle this today.

13 As I mentioned, I will take it under advisement
14 and I will see some, perhaps all of you, back here on Friday.
15 And with that, we'll stand adjourned.

16 Thank you all very much.

17 COUNSEL: Thank you, Your Honor.

18 THE COURT: Take care.

19 (Proceedings concluded at 2:31 p.m.)
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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling

June 26, 2025

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams

June 26, 2025

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable